



# QUARTERLY REVIEW

Fall 2012 (Issue 27)



## LETTER FROM THE PUBLIC COUNSEL

*"A vision without action is a daydream. Action without a vision is a nightmare." - Japanese Proverb*

Dear Friends:

It was gratifying to see that Lieutenant Governor Dewhurst has charged the Senate State Affairs Committee to examine the adequacy of benefits for injured employees. The Office of Injured Employee Counsel (OIEC) concurs that such issue should be considered and has submitted our legislative recommendations for consideration by the 83rd Texas Legislature to that end, as well as attempting to level the playing field for injured employees. We did this well before the required date for such submission in order to provide time for our elected officials and other interested stakeholders to gather any additional information that they might feel a fair consideration requires.

We have submitted five recommendations in order to narrow the inquiry and address the most egregious deficiencies in the workers' compensation process. They are:

- Enact legislation providing that the insurance carrier is liable for attorney's fees incurred by the injured employee when the injured employee prevails in a medical necessity case on judicial review.
- Amend the statute to provide that the insurance carrier must dispute the compensability of an injury to a part of the body within 60 days of receiving written notification that the injury extends to that body part.
- Revise the statute to prevent an injured employee from being required to prematurely enter the dispute resolution system in order to avoid finality of the first certification of maximum medical improvement or impairment rating.
- Enact legislation providing that the range-of-motion model incorporated into the 4th edition of the AMA Guides should be used to determine the impairment rating of the lumbar spine, or in the alternative, that the criteria for supplemental income benefits be lowered to 10 percent impairment.
- Amend the statute to provide a party the same venue to appeal both an administrative medical dispute decision and indemnity dispute decision.

OIEC is eager to provide additional information to legislators and interested stakeholders that will justify the agency's recommendations.

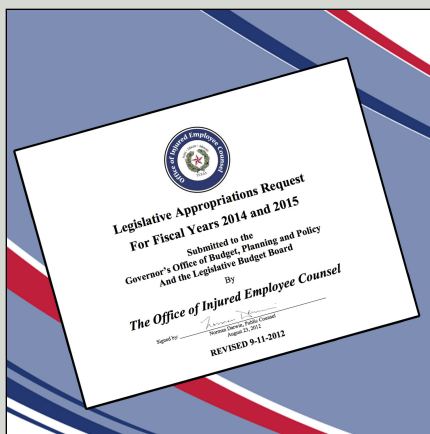
Sincerely,

Norman Darwin, Public Counsel



# Agency Submits Legislative Appropriations Request for Next Biennium Funding

OIEC has the important mission to assist, educate, and advocate on behalf of the injured employees of Texas and has requested legislative funding that will support the achievement of those three goals in fiscal years (FY) 2014 and 2015. State agencies request funding every two years, prior to the start of each legislative session, in their Legislative Appropriations Request (LAR). The LAR is divided into two main components: the baseline request summarizes the agency's expenditures and encumbrances for past years, budgeted amounts for the current fiscal year, and requested appropriations for the coming biennium, and requests for exceptional items to implement services in addition to the baseline request.



OIEC has a unique structure and mechanism for its funding. The agency is administratively attached to the Texas Department of Insurance (TDI) and therefore is not funded for consumables, facilities, or other administrative items. Thus, approximately 95 percent of OIEC's budget is dedicated to salaries. OIEC's funding mechanism is self-leveling and has no fiscal impact on the

State's General Revenue Fund. The Texas Legislature appropriates funds from General Revenue (GR) Dedicated Account 36 to TDI, OIEC, and other agencies that participate in or contribute to the regulation of insurance, prevention of insurance loss, and administration of workers' compensation. Both the Texas Insurance Code and Texas Labor Code require that the maintenance taxes paid by workers' compensation insurance carriers be set with the intention of collecting the revenue needed to fund authorized expenditures from Fund 36.

A revised version of OIEC's LAR for FY 2014-2015 was submitted in September 2012. The baseline request for OIEC is approximately \$7.75 million per year, which is the same funding level since the FY 2010-2011 biennium.

OIEC is also requesting approximately \$779,500 per year for exceptional items to ensure the agency can meet the demand for its services. Since FY 2010, the number of customers assisted at agency field offices has increased by nearly 50 percent. Additionally, the growing number of customers whose first language is not English requires OIEC to find innovative ways to serve the population.

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**OIEC will be closed the following days for the upcoming holidays:**

Monday, December 24  
Tuesday, December 25  
Wednesday, December 26  
Monday, December 31  
Tuesday, January 1, 2013

OIEC wishes everyone a happy and safe holiday season.

[www.oiec.texas.gov](http://www.oiec.texas.gov)





OIEC's exceptional items include the following:

- 20 full-time positions (15 ombudsmen and five customer service representatives) at a cost of \$720,000 per fiscal year;
- Language Line services at a cost of \$50,000 per fiscal year; and
- Public Counsel salary increase of \$9,500 per fiscal year.

The 83rd Texas Legislature will convene January 8, 2013. During the session, the Legislature will review OIEC's appropriations request and approve its budget for the FY 2014-2015 biennium. The FY 2014-2015 LAR for OIEC is available at <http://www.oiec.texas.gov/resources/publications.html>.

## Early Intervention Saves Money in Texas Workers' Compensation System

For several years OIEC has been an active participant in the International Association of Industrial Accident Boards and Commissions (IAIABC) and the National Association of Insurance Commissioners (NAIC). These organizations provide OIEC with information on "best practices" for workers' compensation systems. A best practice topic discussed at the recent IAIABC conference was early intervention. Early intervention allows a dispute to be resolved prior to entering the formal dispute resolution process, which is beneficial for all stakeholders because it saves money within the workers' compensation system.

OIEC's early intervention methods resolve approximately 500 disputes each month prior to entering the dispute resolution process, which saves the State of Texas hundreds of thousands of dollars each year. Since the agency was created in 2006, OIEC has seen increased success in dispute resolution through diligent early intervention and case development efforts. However, OIEC could accomplish more with additional staff to meet the agency's increasing workload. If funding is approved for the exceptional items in the agency's appropriations request, 20 more employees will significantly contribute to OIEC's early intervention efforts.

## Injured Employees Benefit from Advocacy Through Rule Comments

The injured employees of Texas have OIEC to advocate on their behalf. According to the Merriam-Webster dictionary, to advocate is "to plead in favor of." Advocacy, one of OIEC's three main goals, is accomplished in part through commenting on rule proposals made by the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC). OIEC's Legal Services Program reviews all rule proposals and provides written comment on those that are believed to affect injured employees. The goal is to make the rules work better for them. In the past, most of the comments were prepared in the OIEC Central Office. However, a commitment has been made to place more emphasis on input from the agency field offices, especially on the proposed rules (such as benefit review conference rules) that affect how business is conducted in the agency field offices.



Beginning in January 2012, Legal Services has involved a regional staff attorney (RSA) in the rule comment process on a rotating basis. This practice was so successful that as of August 2012, all RSAs help prepare comments on the rule proposals with the greatest impact on injured employees. The process has resulted in a broader knowledge base in OIEC's rule comments.

OIEC's most recent set of rule comments, concerning utilization review for health care, provides an example of how the process works. TDI-DWC sent out a new set of proposed utilization review rules. These rules included some elements of TDI-DWC's prior proposals along with some new

provisions. Legal Services sent the proposal to all RSAs and scheduled a telephone conference to discuss the proposed rules. Prior to this discussion, all Legal Services personnel reviewed the new proposal and OIEC's comments to prior utilization review proposals. After management review, the resulting comment was sent to TDI-DWC.

OIEC's final rule comment included a number of suggestions, including:

- a provision that ombudsmen are entitled to receive the same notices and copies of documents as those received by lay representatives in the workers' compensation system;
- the addition of "psychiatric disturbances" and "symptoms of substance abuse" to the definition of medical emergency;
- the inclusion of a definition of "disability" since the rule specifically states that disability for purposes of the rule does not have the meaning commonly assigned to that term in workers' compensation;
- the extension of the definition of "disqualifying association" to include any relationship between the Utilization Review Agent (URA) and the designated doctor or the Independent Review Organization (IRO) doctor in the case; and
- a requirement that the URA list the documentation reviewed in making an adverse determination.

Injured employees benefit from rule comments made on their behalf. The inclusion of all RSAs in the process has improved the value of OIEC's rule comments to injured employees.

## Leadership Training Builds Strong Agency Foundation

OIEC is a small agency with a large mission. Positive, dynamic leadership by the agency's management team ensures that every employee is motivated by the agency's mission as well as its commitment to protecting the rights of the injured employees of Texas in the workers' compensation system. OIEC's emphasis on leadership-building is evidenced by annual Legal Services and leadership

conferences as well as the selection of Deputy Public Counsel/Chief of Staff Brian White to Leadership Austin.



**Legal Services Conference.** Legal Services has an important role in agency operations. In addition to assisting the ombudsmen, the program is responsible for rule comments, legal training, and review of procedures and correspondence. The staff, located in field offices across the state, met in August and was able to work together on several projects. Three proposed rules (post designated doctor examination by a treating doctor or referral doctor, Medical Quality Review Panel, and PLN-12 *Notice of Potential Entitlement to Death Benefits* process and proposed application) were reviewed and comments prepared. Additionally, they developed standard language for agency correspondence and received training in Westlaw.

**Leadership Conference.** Directors, associate directors, and supervisors have historically participated in leadership conferences each year. The most recent Leadership Conference broke from tradition and took place the day after the Legal Services Conference so that the RSAs could be included in the initial day. Jeff Power from Alliance Work Partners provided techniques in his presentations, "Effective Leadership" and "Delivering Bad News," which will help staff handle difficult situations. With new Director Anthony Walker at the helm of OIEC's Customer Service Program, the conference afforded management the opportunity to move forward and further align as a team. Agency leaders made progress on succession planning, human resource initiatives, and audits of agency programs. RSA Veronica Boulden noted that it was, "interesting how all programs (Customer Service,

Ombudsman, Legal Services, and Administration and Operations) are dependent on the other to function efficiently. One team, one mission!"

**Leadership Austin.** OIEC's Deputy Public Counsel/Chief of Staff, Brian White, was one of 60 individuals selected by Leadership Austin for the Essential Class of 2013. Leadership Austin has developed community leaders since 1979 and selects participants for the Essential Class based on their community involvement and service. During the class year, participants meet monthly in various locations around Austin to discuss regional issues, enhance their leadership skills, and develop strong relationships to encourage innovative, collaborative solutions to the challenges facing the community. Mr. White has proven himself as a leader at OIEC and in the Texas community at large.

## Resources to Find an Attorney for a Workers' Compensation Claim

Injured employees in Texas have the right to hire an attorney to assist them with their workers' compensation claims. If there is a dispute, it might go through one or more steps in TDI-DWC's hearings process, including a benefit review conference, contested case hearing, and Appeals Panel review. The injured employee can hire an attorney for assistance through the process, request assistance from an OIEC ombudsman, or handle the issues themselves. Nearly all issues are resolved at the Appeals Panel review level or earlier.

However, if the dispute gets to the Appeals Panel review and either party is not satisfied with the Appeals Panel decision, the decision may be appealed to the district court or the county court at law. OIEC is prohibited from assisting injured employees outside the TDI-DWC dispute process. Injured employees at this stage of the process need to hire an attorney or choose to represent themselves.

OIEC is unable to recommend an attorney, but there are resources on the OIEC website that may be helpful for those who are interested in hiring an attorney. For this information, please visit the "Hiring an Attorney" webpage at [www.oiec.texas.gov/resources/atty\\_info.html](http://www.oiec.texas.gov/resources/atty_info.html).

## Question of the Quarter

**Question: I was just hurt at my job. My employer is covered by workers' compensation insurance. What are some of the important deadlines I need to know about?**

**Answer:** This is an important question because if you miss a deadline in your workers' compensation claim, you risk your entitlement to benefits. Three important deadlines are: 30 days, 90 days, and one year.

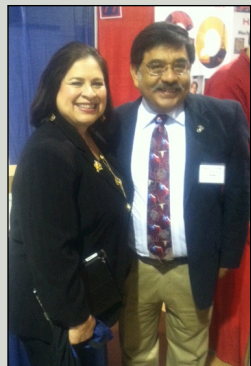
1. 30 days to notify your employer. You have the responsibility to tell your employer (your supervisor or someone in a supervisor capacity) if you have been injured at work while performing the duties of your job. You must tell your employer within 30 days of the date you were injured or first knew your injury or illness might be work-related.
2. 90 days to dispute the first impairment rating assigned. Sometimes an injured employee does not recover fully from the injury and has permanent damage. A doctor who determines that you have reached maximum medical improvement will also assign an impairment rating (it should be on a Form DWC069, *Report of Medical Evaluation*). Your impairment rating indicates the extent of permanent damage to your body as a result of your injury. The first impairment rating assigned becomes final unless it is disputed to TDI-DWC within 90 days.
3. One year to file an *Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease* (DWC041). You have one year after you were injured or first knew that your illness might be work-related to file this form with TDI-DWC. Send the completed DWC041 form even if you already are receiving benefits.

You may lose your right to benefits if you do not meet these deadlines. If you have any questions about these requirements or your responsibilities, please contact OIEC at 1-866-EZE-OIEC (1-866-393-6432).





# Senator Van de Putte - A Champion for Injured Employees



Senator Van de Putte and OIEC Associate Director Juan Rodriguez at a job fair for veterans.

Equity in the Texas workers' compensation system is important to OIEC. During the 82nd Legislative Session, the Legislature passed Texas House Bill (HB) 2605 that allows injured employees to request a second opinion on their medical condition and thereby obtain evidence for use in dispute resolution proceedings.

For more than six years Senator Leticia Van de Putte of San Antonio led the way for this

change, which will improve equity in the system. TDI-DWC is now working on the implementation of the new statute. OIEC commends Senator Van de Putte and her staff for their hard work on behalf of the injured employees of Texas.

## Honor of Texas' Fallen Officers



OIEC assists employees of all occupations, including peace officers. OIEC also assists the families of those who lose their lives while working. Since January 2012, 86 peace officers have been killed in the line of duty in the United States. In Texas, six peace officers have lost their lives while protecting and serving the citizens of Texas (Officer Down Memorial Page).

Governor Perry honored some of these fallen officers in The Star of Texas Awards ceremony in September 2012. The Star of Texas Awards were created by House Bill 1937 in 2003 to honor and commemorate

individuals who have made profound commitments while performing their duties as peace officers, firefighters, and emergency medical first responders.

OIEC is proud to assist the families of fallen officers with workers' compensation death benefit questions or disputes. The assistance the agency provides to these families is one way it can honor those who kept the public safe.

## Communications Corner

Information about the Texas workers' compensation system and its processes is available in a variety of ways. These include OIEC's publications, outreach events, and monthly educational presentations.

**Publications.** Two publications, "Retrospective Medical Necessity Process" and "Preauthorization Process," have been updated (revised September 2012). A new publication, "What to Do When You Receive a Workers' Compensation Medical Bill," is also now available. It describes the various situations that could lead to a health care provider sending an injured employee a workers' compensation bill and the steps that could be taken to resolve the matter. These publications, in both English and Spanish, are available on the OIEC website at [www.oiec.texas.gov/resources/publications.html#brochures](http://www.oiec.texas.gov/resources/publications.html#brochures).

**Outreach Events.** OIEC participated in several events in the past few months. In August, Veronica Boulden provided an overview of OIEC services and the workers' compensation system to the Angleton Lions Club. Valeria Rivera provided an overview in Spanish for Labor Day Week at the Mexican Consulate in Dallas. Ms. Rivera presented at three sessions with a total attendance of about 140 people. In September, Kathryn Harris spoke at the Mid-Size Agency Coordinating Council, providing an overview of OIEC to 20 attendees.

OIEC has also participated as an exhibitor at events including: the TDI-DWC Compliance Conference in Austin and Houston, the annual meeting of the American College of Physicians Texas Chapter in Fort Worth, and the Executive Women in Texas Government Annual Professional Development Conference in San Marcos.

**Monthly Educational Presentations.** The next presentation will be held in OIEC field offices on January 25, 2013.



# Email Addresses Changed

In December, OIEC's email application was converted to Microsoft Outlook and all OIEC email addresses have changed from **oiec.state.tx.us** to **oiec.texas.gov**. This is a result of the State's overall move to the **texas.gov** domain. There will be a transition period of a few months where both the old and new email addresses will work. OIEC has placed an announcement on its website about the conversion and will continue to keep its customers informed as to when the old addresses will be phased out.

## Case Study: Dupuytren's Disease

Mr. T sustained a compensable injury as a result of a fall from a delivery truck. He broke his right wrist and was treated in the emergency room; however, the injury proved to be more severe than expected and he was referred to a hand surgeon for surgical correction. Following hand surgery, Mr. T developed severe stiffness and dysfunction in his affected hand. He was subsequently diagnosed with Dupuytren's disease—a rare disease of the hand in which the toughening of the fascia of the hand causes the fingers to curl over time.

Mr. T was assisted by Ombudsman Johanna Martinez in the difficult task of linking a rare and slow-progressing disease to his traumatic injury. The causes of Dupuytren's disease are not readily known. According to Mayoclinic.com, Dupuytren's disease is thought to be associated with an autoimmune reaction. In the early stages of the disease, the skin of the hand begins to thicken causing a slight contracture of the fingers, especially the little and ring fingers. As the disease progresses, cords of tissue begin to form under the skin, and as these cords tighten, the finger is drastically bent. There is almost certainly a genetic predisposition involved in Dupuytren's disease. In addition, Mr. T's age had also been shown to put him at a higher risk for the disease.

Despite these hurdles, the ombudsman was able to find medical abstracts linking Dupuytren's disease to acute, traumatic injuries. With assistance from her RSA, Gina McCauley, Ombudsman Martinez was able to assemble information for Mr. T's surgeon, Dr. R, to consider. Dr. R issued a strong causation

narrative linking Mr. T's Dupuytren's disease to his compensable injury.

At the contested case hearing, the hearing officer had to determine whether Mr. T's compensable injury extended to include right hand Dupuytren's disease and traumatic osteoarthritis of the right hand and wrist. In support of the insurance carrier's position was a peer review report from an orthopedic surgeon that argued that Mr. T's condition was solely a disease of life, and was therefore unrelated to the compensable injury. The peer review doctor did, however, agree that Mr. T's osteoarthritis was caused by the compensable injury. The hearing officer agreed that the preponderance of the evidence supported the link between Dupuytren's disease, osteoarthritis, and Mr. T's compensable injury.

The insurance carrier appealed the decision; however, the Appeals Panel affirmed the hearing officer's decision.

*Case Update: A contested case hearing was held on the death benefits case that was profiled in the preceding issue of the OIEC Quarterly Review. Despite an expert witness report linking Mr. M's work conditions to his death, the hearing officer was not persuaded by the evidence presented, and ruled against the beneficiary. The beneficiary's ombudsman has assisted her in an appeal to the Appeals Panel.*

## Employee Spotlight

**Juan Mireles, Ombudsman Program Associate Director**



When asked to talk about himself, Juan Mireles went to his computer and Googled his name—a series of mug shots popped up in the results. “I don’t look like any of these gangsters,” he said. “OK, here I am...National Commander of the American G.I. Forum.” Juan clicked on the link and

scrolled down the page to a picture of him giving a public service award to a retired Navy Captain. The American G.I. Forum is a veterans’ organization dedicated to addressing discrimination and inequities suffered by Hispanic veterans. Juan has been dedicated to serving veterans for virtually his entire



life. His father was an Army veteran who served in World War II, Korea, and Vietnam. His older brother, Joe Mireles, served in Vietnam and fought in one of the bloodiest battles of the entire war—Hill 937, also known as Hamburger Hill. Juan explained that in his neighborhood, in 1968, everyone either joined the military or got married and had kids after high school. Acting on his brother's advice, Juan joined the Navy.

During his final two years of service, Juan was stationed in Puerto Rico. During that time, the Navy was testing bombs and heavy guns on some of the small islands, and Juan was likely sent to Puerto Rico to unofficially serve in a public relations role. After leaving the Navy, Juan enrolled at St. Mary's University to study government and history and eventually earned a master's degree in Latin American History. He was in awe of Cesar Chavez and especially of Dr. Hector P. Garcia. Dr. Garcia served in World War II as a medical doctor and afterwards started the organization known as the American G.I. Forum. In 1949, Dr. Garcia petitioned then Senator Lyndon Johnson to allow the burial of Army private Felix Longoria at Arlington National Cemetery. Felix Longoria became the first Mexican-American to be buried there, and the event propelled the American G.I. Forum to the forefront of the civil rights movement.

Juan, like Dr. Garcia, has an exhaustive résumé of service to veterans. During the Vietnam War, he was moved by the plight of returning veterans—including his own brother. As an outreach specialist for the National Veterans Outreach Program, Juan began a career in veteran services that would evolve into counseling, case work, and eventually management. After 10 years, Juan attained one of the most sought after positions: National Veterans Services Officer. In this capacity, Juan gained experience representing veterans in hearings before the Department of Veterans Affairs.

In 1990, Juan's nearly 15 years of dedication led to his nomination for National Commander of the American G.I. Forum—an honor that allowed him to continue Dr. Garcia's legacy. Juan was elected National Commander of the American G.I. Forum of Texas eight times and five times as National Commander of the G.I. Forum of the U.S. This makes him the most elected Texas Commander. Juan was National Commander of the G.I. Forum at a time when the organization was politically split over a proposed amendment to make English the official language in the United States. Ultimately, Juan

elected to side with the majority of other member states of the G.I. Forum and back the amendment.

At age 29, Juan was the youngest ever to be elected National Commander. When asked about this feat, Juan explained, "You should grow a mustache. That's what I did to look older when I was the National Commander." He pulled out an old ID card proudly showing off his mustache and giant pompadour. Juan laughed. "You see, when I was in the Navy, I could hide all that hair under my cover (hat)." Juan began working for the Texas Workers' Compensation Commission as an ombudsman and two decades later, he still has every one of his different business cards—each with "Ombudsman" somewhere in his title. He is currently an Associate Director for the OIEC Ombudsman Program.

His coworkers are like family to him. Donna Raney is one of Juan's closest friends at work and he explained that he feels especially close to her because her father was killed in Vietnam. On the other side of the OIEC Central Office, another coworker let loose with a barrage of stories about Juan's dancing prowess. The stories that really left a lasting impression were the displays of deep affection for family and friends that Juan shows. For example, Juan always has a Valentine's Day present for his protégé, Luz Loza. And as a lasting sign of affection, Juan has always kept the same outgoing voicemail message that she composed for him.

Juan has spent nearly his entire adult life in the service of others. He is intelligent, easy-going, kind, and has a giant heart. He is the kind of person that you would want on your side, and the injured employees of Texas are fortunate to have him working on their behalf.

## CONTACT US

### Office of Injured Employee Counsel

7551 Metro Center Drive, Suite 100, MS 50  
Austin, TX 78744-1609

Telephone: (512) 804-4170  
Fax: (512) 804-4181

Injured Employee Toll-free Telephone Number  
(866) 393-6432

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